IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6377 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE R.P.DHOLAKIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNIL HIMMATLAL MISTRY - Petitioner(s)
Versus
AHMEDABAD URBAN DEVELOPMENT AUTHORITY - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner(s) : 1,
MR RR MARSHALL for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE R.P.DHOLAKIA

Date : 19/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1.Rule. Learned counsel Mr.R.R.Marshall waives service

of notice of rule for respondent-Ahmedabad Urban Development Authority.

2. The petitioner has prayed in this petition to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to annul the process of public auction scheduled on 5th April 2006 pursuant to the public notice (at Anneuxre-"A") and to further direct the respondents to issue fresh public notice for holding public auction afresh after making known to all concerned persons about the variation in the lay-out of the plots.

3. On 4.4.2006, Division Bench of this court consisting of Hon'ble Ms. Justice R.M.Doshit and Hon'ble Mrs. Justice Abhilasha Kumari ordered to issue notice to the respondent in this case making it returnable on 7.4.2006 with the direction that the service of the notice shall be effected to the respondent before 5.4.2006. However, the process of the public auction scheduled on 5.4.2006 was made subject to the result of the petition.

4.In response to the notice issued by this court, a detailed reply affidavit dated 9.4.2006 of Mr.Rajendra Chaudhari, Estate Officer of the respondent Ahmedabad Urban Development Authority. Along with it, the documents are also annexed to it.

5.Mr.Dave, learned counsel for the petitioner, first submitted that as per the advertisement at Anneuxre-A, the last date for filling up the forms was 31st March 2006 and due to poor financial condition of the petitioner, the petitioner had not applied for tender form. He submitted that if it was made known that the date would be extended, then he would have certainly applied for the tender form. Mr.Dave further submitted that having once floated the tender form it was not open to the respondent authority to refloat the tender of the plots as it amounts to change in the rules of the game, which is not permissible, as held by the Hon'ble Supreme Court of India in case of ***M/s.Monarch Infrastructure (P) Limited vs Commissioner, Ulhasnagar Municipal Corporation reported in AIR 2000 SC 2272***.

6.The aforesaid submission made by learned counsel, Mr.Dave for the petitioner was vehemently opposed by

the learned counsel, Mr.Marshall for respondent. Firstly, on the basis of the reply affidavit, it was submitted that the financial condition of the petitioner was not that poor which prevented him from even paying Rs.1,000/- for the tender form; and secondly that having failed to apply for the tender form and submit it, it would not be open to the petitioner to urge that the respondent authority had wrongly changed the rules of the game. He, therefore, submitted that the judgment of the Hon'ble Supreme Court in case of M/s.Monarch Infrastructure (P) Limited (supra) would not be applicable to the facts of this case.

7. Before dealing with the aforesaid rival submissions of the respective parties, few important facts are required to be stated in nutshell, which are as under :-

The respondent No.2-Ahmedabad Urban Development Authority (for short “AUDA”) desirous of selling 28 plots by auction, for which an advertisement dated 15.3.2006 was published in the Gujarati daily newspaper, “Gujarat Samachar”. The forms were

distributed between 20th to 27th March, 2006, which were to be submitted by interested parties on or before 31st March, 2006. When it had come to the notice of the respondent that six particular plots, which were to be auctioned, part of the plots were to be sold for the purpose of putting up CNG / LPG pumps, which could not be opened on the main road, therefore, in public interest, decision was taken to relocate the CNG / LPG pumps from the front of those six plots to other portion of the plots.

In pursuance of the advertisement, about 125 bidders had filled up the forms and made payment of Rs.5 lacs as deposit. They could bid for any of the 28 plots subject to the condition that once the bidder was successful for one plot, then he would not be entitled to bid further. Initially, last date for accepting the forms was 31.3.2006 and by that time 98 forms were filled up with the deposit of Rs.5 lacs. However, on request, the respondent thought that if more forms are received, then they may fetch better price, therefore, they extended the date up to 4.4.2006 and during that period 27 other forms were also received.

Out of 28 plots, 20 plots were sold for an extraordinary price ranged from Rs.7,020/- to Rs.61,000/- per square meter in Vejalpur and Vastrapur area respectively. The total value of those 20 plots sold was Rs.172,44,65,080.

8. In view of the aforesaid facts, now we will consider the aforesaid rival submissions made by respective learned counsel for the parties.

9. From what has been stated above, it is clear that the petitioner had not even applied for the form by paying an amount of Rs.1,000/-, therefore, there was no question of depositing Rs.5 lacs with the form. If the financial condition of the petitioner was so poor by 31st, then we are not prepared to believe that it would improve in four days. However, an attempt was made to submit that it was the end of financial year, therefore, they did not think it fit to apply for tender. These are nothing but lame excuses. The person, who has not applied has no right to make such grievance. Apart from this, one more glaring fact stated in the writ petition by the petitioner is that he was interested only in plot Nos.8, 9, 12, 13, 22 and

25 and not for all the plots. Still, the prayer made in the writ petition was to quash the auction for all 28 plots. From the tone and tenor of the petition, we only gather this impression that an attempt was made to stall the entire auction process.

10.In view of what has been stated herein above, we are not inclined to entertain this petition as in our considered opinion, discretionary powers of this court under Article 226 of the Constitution of India can only be exercised in favour of such persons, who are really interested and not in favour of those persons who simply want to stall the proceedings.

11.In view of the above discussion, this petition fails and is hereby summarily dismissed. Rule discharged with costs.

(B.J.SHETHNA, J.)

(R.P.DHOLAKIA, J.)

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